

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7755 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

DECEASED BHANUBHAI PIROJSHA MEHTA

Appearance:

Mr.BY MANKAND, ASSTT GOVERNMENT PLEADER for Petitioner

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 03/03/99

ORAL JUDGEMENT

#. The impugned order dated 24th April, 1997 passed by the Urban Land Tribunal, Ahmedabad in Appeal No. Surat 18/94 is admittedly, an order upholding the order passed by the competent authority holding 44,000 sq.mts of land of the respondents to be an excess land. This order has been passed by the Urban Land Tribunal after hearing both the sides. It is submitted on behalf of the learned Asst.. Govt. Pleader that before the order of the competent authority could be considered in revision by

the State Government, the Tribunal has passed order dated 24th April, 1997 and therefore, the State of Gujarat now seeks to challenge the order of the competent authority passed on 22nd April, 1993 as also the order passed by the Tribunal. What is sought to be contended is that the Competent Authority should have declared more than 44,000 sq.mts of land to be excess but no appeal was preferred by the petitioner in the nature of cross appeal or otherwise under Section 33. It is very clear from the facts of this case that the appeal against the competent authority's order dated 22nd December, 1993 preferred in 1994 by the respondent private party remained pending before the tribunal until the tribunal decided this appeal in 1997. The notice of this appeal had been given to the Competent Authority by the Tribunal and even for this period of more than three years, while the appeal was pending, the State Government could not have exercised the powers of revision under Section 34 in terms of the language contained in the Section itself. Section 34 is reproduced as under;

"The State Government may, on its own motion, call for an examine the records of any order passed or proceedings taken under the provisions of this Act and against which no appeal has been preferred under Section 12 or Section 33 for the purpose of satisfying itself as to the legality or propriety of such order or so as to the regularity of such procedure and pass such order with respect thereto as it may think fit :

Provided that no such order shall be made except after giving the person affected a reasonable opportunity of being heard in the matter."

It speaks of appeal under Section 33 which includes appeal by either side. Had it been provided in Section 34 that, "..... no appeal has been preferred under Section 12 or Section 30 or Section 33 by the State.....", there would have no difficulty for the State to exercise this power of revision under Section 33 even if the appeal is preferred by the private party. But the words 'by the State' are conspicuously wanting in the language of this section and it mentions of cases in which no appeal is filed under Section 33 and therefore even when an appeal is filed by the private party under Section 33, the State cannot exercise revisional power.

#. The legislative intention is therefore very clear

that revisional powers can be exercised only if no appeal is preferred. The revisional power are therefore required to be exercised immediately after passing of the order by Competent Authority and before any appeal is filed. In cases where the appeal is preferred against the order of the competent authority, the State Government has to argue its case before the tribunal and in that case, whatever order is passed by the Tribunal, is binding on both the parties. Whereas, the Tribunal has passed the impugned order dated 24th April, 1997, against the order of the competent authority after hearing both the sides and has also upheld the order of Competent Authority, there is no question of exercising the powers of revision under Section 34. The competent authority as well as the Urban Land Tribunal which is presided over by the Secretary, Revenue Department as ex officio Urban Land Tribunal are the statutory functionaries. The special statute i.e. Urban Land (Ceiling and Regulation) Act, 1976 only gives right of revision to the State Government under this Act in cases where no appeal is filed. Besides this, the State Government has been given powers under Section 35 to issue orders and directions to the competent authority and such orders and directions have to be of general character as it may consider necessary in respect of any matter relating to the powers and duties of competent authority and thereupon, the competent authority shall give effect to such orders or directions. In case any such orders or directions under Section 35 are issued by the State Government to the Competent authority, the competent authority is under statutory obligation to comply with the same and therefore it is open to the Government to issue directions to the competent authority to send a copy of the order passed by him in every case to the State Govt. and that in any appeal against the order of the competent authority, if the State Government is not impleaded as a party and only competent authority is arrayed as respondent, the concerned competent authority should raise an objection that "State of Gujarat" may be impleaded as a party. In that case, it will be obligatory for the competent authority to follow such directions / orders issued under Section 35 to obviate the likely prejudice which the Government may have to suffer in such cases. But in cases, where the competent authority passes an order and then does not comply with such directions or orders, it is always open for the State Government to take appropriate action against the competent authority in accordance with law. But so far as the remedy against the order of the competent authority is concerned, remedy is either an appeal by the aggrieved party and if no appeal then only

revision by the State Government. The State Government therefore now can not challenge the order of competent authority in the facts of the present case after the Tribunal's order when the order of competent authority has merged in the Tribunal's order and so far as the Tribunal's order is concerned, the same is an order rejecting the appeal of the landholder in favour of the Government upholding the Competent Authority's order declaring 44,000 sq.mtrs. of the land to be excess.

#. No illegality has been pointed in the order passed by the Tribunal and the Tribunal has rightly dismissed the appeal which was filed against the order of the competent authority by the respondent private party. In such circumstances, there is no basis for challenging the order of the Tribunal at the instance of the State Government. This Special Civil Application is not at all entertainable and the same is hereby dismissed.

Date : 3-3-1999

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